

# **THE SHARI'AH COURT PROCEDURE IN MINDANAO – PHILIPPINES: AN UNDERSTANDING**

## **THESIS**

**Presented to  
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**By**

**SAADA SAMAD ALIODEN  
NIM : O200120012**

**ISLAMIC STUDIES DEPARTMENT  
GRADUATE SCHOOL  
MUHAMMADIYAH UNIVERSITY OF SURAKARTA  
INDONESIA  
2014**

## ADVISER NOTE

**Prof. Dr. Suparman Syukur, M.A.**

Dosen Program Studi Hukum Islam  
Program Pascasarjana  
Universitas Muhammadiyah Surakarta

Nota Dinas

Hal: Tesis Saudari Saada Samad Alioden

Kepada Yth.

Ketua Program Studi Hukum Islam  
Program Pascasarjana  
Universitas Muhammadiyah Surakarta

Assalamualaikum warohmatullahi wabarokatuh,

Setelah membaca, meneliti, mengoreksi dan mengadakan perbaikan seperlunya terhadap Tesis Saudari:

Nama	:	Saada Samad Alioden
NIM	:	0200120012
Konsentrasi	:	Hukum Islam
Judul	:	The Shari'ah Court Procedure in Mindanao – Philippines: An Understanding

Dengan ini kami menilai tesis tersebut dapat disetujui untuk diajukan dalam sidang ujian tesis pada Program Studi Hukum Islam Universitas Muhammadiyah Surakarta.

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Pembimbing I,

**Prof. Dr. Suparman Syukur, M.A.**

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**APPROVAL OF THESIS FOR SUBMISSION**  
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**SAADA SAMAD ALIODEN**

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and is certified to be accepted for submission

**THE EXAMINER BOARD**

Examiner I

**Dr. Anam Sutopo, M.Hum**

Examiner II

**Dr. M. Abdul Khaliq Hasan, M.A., M.Ed**

Examiner III

**Dr. Imron Rosyadi, M.Ag**

Surakarta, September 20<sup>th</sup>, 2014

Universitas Muhamadiyah Surakarta  
Graduate School  
Director,



**Prof. Dr. Khudzaifah Dimiyati**



## STATEMENT OF AUTHENTICITY

I, the undersigned

Name : **SAADA SAMAD ALIODEN**  
NIM : **O200120012**  
Study Program : **Masters' in Islamic Studies**  
Concentration : **Islamic Law and Jurisprudence**  
Title : **THE SHARI'AH COURT PROCEDURE IN MINDANAO –  
PHILIPPINES: AN UNDERSTANDING**

Stating the fact that I submit this thesis with correct result of my own work, except for quotations and summaries that I have explained the source. If later proved that this thesis is a plagiarism, I accept that the title given by the University of Muhammadiyah Surakarta will be cancelled.

Surakarta, SEPTEMBER 2014  
The one who make the statement:



**Ms. SAADA SAMAD ALIODEN**

## MOTTO

وَإِنْ طَائِفَتَيْنِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلَحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيَّ إِلَىٰ أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلَحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ﴿٥٩﴾ (049:009)

“If two parties among the Believers fall into a quarrel, make ye peace between them: but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the command of Allah; but if it complies, then make peace between them with justice, and be fair: for Allah loves those who are fair (and just)” (Al- Qur-an: 49:09)

## MEANING IN BAHASA INDONESIA

“Dan kalau ada dua golongan dari mereka yang beriman itu berperang hendaklah kamu damaikan antara keduanya! Tapi kalau yang satu melanggar perjanjian terhadap yang lain, hendaklah yang melanggar perjanjian itu kamu perangi sampai surut kembali pada perintah Allah. Kalau dia telah surut, damaikanlah antara keduanya menurut keadilan, dan hendaklah kamu berlaku adil; sesungguhnya Allah mencintai orang-orang yang berlaku adil.” (Al- Qur-an: 49:09)

## MEANING IN IRANUN DIALECT

“O aden a dow a ka sagorompong ko miyamaratiyaya apembono, na tanora niyo siran. Na amai ka phanalimbota n o isa so pediyan, na sangkaa niyo so phanalimbota taman sa di mendod ko mga sogowan o Allah. Na amai ka mendod siran na tanora niyo siran ko ontol, go paginontolan kano. Pekhababaya n o Allah so maontol.” (49:09)

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I specially dedicate this humble work to my Almamater, **Muhammadiyah University of Surakarta, Indonesia.**

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*Ms. Saada S. Alioden*

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## **LIST OF ACRONYMS**

1. *A.R.M.M.* : Autonomous Region in Muslim Mindanao
2. *C.M.P.L.* : Code of Muslim Personal Law
3. *P.D. 1083* : Presidential Decree 1083
4. *U.M.S.* : Universitas Muhammadiyah Surakarta



## LIST OF ABBREVIATIONS

1. Art. iii : this means “article 3”. “Arts.” Is the plural of Articles.
2. e.g. : is an abbreviation for the Latin words *exempli gratia*, which mean “for the sake of Example. It may also stand for “example given”.
3. et al. : this means “and others” (*et alii*)
4. Fig. 1 : this means “Figure 1”. “Figs.” is use for figures.
5. Ibid. : the term *ibid.* is the abbreviation of the Latin term *ibidem* meaning “the same”. It is used in foot notes in order to avoid the repetition of the reference information immediately preceding. When referring to the same work and page it is used alone. To this abbreviation however, must be added the new page reference or the new volume number and page reference.
6. Infra : this means “below”.
7. i.e. : is an abbreviation for the Latin words *id est*, which mean “that is”. It may also stand for “in essence”.
8. Loc. Cit. : this is the abbreviation of the Latin term *loco citato*, meaning “the place cited”. It is used when a second but non – consecutive reference is made to the exact material previously cited with the same page and volume but with intervening entries.
9. Op. Cit. : this is the abbreviation of the latin term *Opera Citato*, meaning “the work cited”. This is used where a footnote reference has been completely given previously and others follow closely but with some intervening citations. The author’s family name only must be given first to identify the “work cited” followed by a comma and then by the page or pages as the case may be.

- 10. p. 6** : this means “page 6.” “pp.” stands for pages.
- 11. pp. 10 – 15** : this means “pages 10 to 15 inclusive”.
- 12. pp. 7 f.** : this means “page 7 and the following page.” This is also written “pp. 7 et seq.”.
- 13. vs.** : this means “verse.” “vss.” is used for verses.
- 14. Vol. III** : this means “Volume 3”. “Vols.” is used for volumes.
- 15. Sec. 8** : this means “Section 8.” “Secs.” is used for sections.
- 16. Supra** : this means “above”.

## **LIST OF FIGURE**

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**Figure 1 – A Conceptual Framework of the Shari’ah Court Procedure in Mindanao**

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# **THE SHARI'AH COURT PROCEDURE IN MINDANAO – PHILIPPINES: AN UNDERSTANDING**

*by*

**SAADA SAMAD ALIODEN**  
**O200120012**

*Department of Islamic Studies  
Graduate School, Muhammadiyah University of Surakarta  
saadaalioden@yahoo.com*

## **ABSTRACT**

In this study, the researcher seeks to understand and to describe the Shari'ah Courts procedure in Mindanao – Philippines. Especially, this study find the answer to the following questions, namely: firstly, what is the origin of Shari'ah Courts in Mindanao – Philippines?; Secondly, what are the Shari'ah Courts in Mindanao – Philippines?; Thirdly, what are the basic jurisdictions of the Shari'ah Courts in Mindanao – Philippines? And Finally, what are the Special Rules of Procedure governing the Shari'ah courts in Mindanao – Philippines? The main objective of this study is to cater the need of Shari'a Students and prospective candidates to the Special Shari'a Bar Examinations in the Philippines.

This research uses of Descriptive and Qualitative research method. This study is also a kind of library research where the research data and information obtained from major books which are related to this research. This study was conducted at Sultan Kudarat, Cotabato City, where the researcher resides on second semester of academic year 2014 – 2015. However, since the researcher was studying at MUHAMMADIYAH UNIVERSITY OF SURAKARTA, Indonesia, It was presented and defended to the said university on September 17, 2014. In the case of this study, descriptive and qualitative research approach in gathering, evaluating and handling data was utilized. Through applying descriptive and / or qualitative methods can ensure reliability in the research. In this research, an inductive approach was used. It is an approach that searches for a specific data related to this research from a variety of data sources in order to acquire essential knowledge and information. To assess the validity of the instruments used in this research such as review of related literature and review of related studies content validity was established where a recognised experts in the area of study (Thesis adviser, Thesis proposal professors, and other qualified persons) was asked to give their opinion on the validity of the tool.

To answer the problems mentioned above in this study scientifically, hence the researcher uses in – depth reading and fact - finding on the following data sources: first, the data sources from a binding law such as P.D. 1083 otherwise known as the Code of Muslim Personal laws of the Philippines, from the Special Rules of Court Procedure governing Shari'a Courts in Mindanao - Philippines and from the Rules of Court in the Philippines;

Second, the data sources as a results of study through many literatures, books, magazines, journals, newspapers, and thesis. Third, the data sources explanations from primary and secondary materials such as encyclopedia and dictionary. The qualitative data taken from the data sources will be analysed through a logical analysis. Finally, the information from the document review could also give clarity to the research questions.

From the data analysis result, the establishment of the Shari'a Courts in the Philippines has been originally conceived in the 1976 Tripoli Agreement entered into by and between the Philippine Government and the Moro National Liberation Front under the auspices of the Organization of Islamic Conference. It has been agreed, among other things, that in the areas of autonomy, the Muslims shall have the right to set up their own Courts which implement the Islamic Sharia'h Laws. In addition, there are three levels of Shari'a Courts in the Philippines, namely: Shari'a Appellate Court, Shari'a District Court and Shari'a Circuit Court. Moreover, The Shari'a courts of the Philippines are courts of limited and special jurisdiction because their jurisdiction is confined to the class of cases enumerated by PD 1083 otherwise known as the "Code of Muslim Personal Laws." They do not exercise the power conferred upon a court of general jurisdiction, i.e., Regional Trial Court, which has the power to take cognizance over all cases not falling under the exclusive original jurisdiction of any court, tribunal, board or officer. Furthermore, the Special Rules of Procedure Governing the Shari'a Courts were promulgated by the Supreme Court pursuant to Articles 148 and 158 of the Code of Muslim Personal Laws. These special rules of procedures take effect immediately, Approved unanimously on September 20, 1983.

**Keywords:** Shari'ah Court Procedure, Islamic Court Procedure, and Special Rules of Procedure governing Shariah Courts



# **OUTLINE OF CHAPTERS**

## **CHAPTER I**

### **BACKGROUND OF THE STUDY**

This chapter discusses the background of the study, statement of the problem, research questions, scope and limitations of the study, objective of the study, significance of the study, previous studies, conceptual framework of the study, methodology and research design of the study.

## **CHAPTER II**

### **THE JUDICIAL HIERARCHY IN THE PHILIPPINES AND ITS CLASSIFICATION**

This chapter discusses the following: firstly, the classification of courts in the Philippines; secondly, the Judicial Hierarchy in the Philippines, namely: Supreme Court, Court of appeals, Sandigan Bayan, Court of Tax Appeals, Regional Trial Court, Shari'a District Court, Municipal Circuit trial Courts, Municipal Trial Courts, Metropolitan Trial Courts, and Municipal Trial Courts in Cities, and Thirdly, An Overview of the Sharia Courts in the Philippines.

### **CHAPTER III**

#### **GENERAL CONSIDERATIONS**

##### **Procedure, Jurisdiction, Action and Venue: Definitions and Distinctions**

This chapter defines and explains the distinction among procedure, jurisdiction, action and venue.

### **CHAPTER IV**

#### **SPECIAL RULES OF PROCEDURE GOVERNING THE SHARI'A COURTS IN THE PHILIPPINES**

This chapter describes and explains the statutory basis of special rules of Procedure Governing the Shari'a Courts in the Philippines and the General Procedure, the Oath Proceedings, the Supplemental Proceedings and Agama Arbitration proceedings of Special Rules of Procedure Governing the Shari'a Courts in the Philippines.

### **CHAPTER V**

#### **FINDINGS AND DISCUSSIONS, CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS**

This chapter includes findings and discussions, conclusion, suggestions and recommendations of the researcher to the said study.